IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 159 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

STATE OF GUJARAT

Versus

DAHYABHAI KODARBHAI PARMAR

Appearance:

1. Criminal Appeal No. 159 of 1989

MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Appellant.

MR AMIT J SHAH for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/08/96

ORAL JUDGEMENT

This appeal has been directed against the judgment and order dated 12th December 1988, rendered by the learned Metropolitan Magistrate, Ahmedabad, in Criminal Case No.767 of 1986, whereby the respondent who was charged with the offence punishable under Section 406 of IPC, came to be acquitted.

2. The case of the prosecution may, in brief be stated. Babubhai Jethabhai was the Manager of the Shantinagar Co-operative Housing Society, situated at Ahmedabad. At the relevant time, the respondent was the Secretary. As per the Rules and Bye-laws, the affairs of the Society were being managed. The respondent being the Secretary, was the custodian of the books of accounts, cash and other properties of the Society. It was his duty to collect the amounts and issue receipts, write the accounts and get the same audited. During the period from 1st July 1983 to 6th June 1984, the respondent was managing the affairs of the Society. Thereafter, another Secretary was appointed and the respondent was asked to hand over the charge to his successor. His successor, after taking the charge, could find that there was malpractice, and amounts of Rs.6,194.07 ps. were being misappropriated by the respondent. A complaint before the Police was lodged. During the investigation, it was found out that the respondent was not issuing the receipt, or was issuing the receipt of the lessor amount than he actually received, and thereby he misappropriated the amount. The chargesheet against the respondent was then presented before the lower Court which came to be tried, and at the conclusion of the trial, he came to be acquitted. The State, after being aggrieved by the judgment and order, has preferred this appeal.

3. It has been contended on behalf of the State that, the learned Magistrate has overlooked the evidence on record which clearly shows that the respondent, by writing false account books and issuing false vouchers, misappropriated the amount, but the learned Magistrate, for no good reason, discarded that evidence and erroneously acquitted the respondent. No other submission was made. In view of the submission before me, I have to see whether the learned Magistrate has correctly appreciated, or fell into an error in appreciating the evidence and reaching the conclusion favouring the respondent.

4. No doubt, the learned Magistrate has held that there was no Resolution on record about the entrustment of the property and cash of the Society to the respondent, and therefore, he found that, one of the essential ingredients constituting the offence was wanting, and when that was so, the respondent was entitled to an acquittal. No doubt, on that point, the accused can be acquitted, but in this case, the statement recorded by the lower Court under Section 313 of the Code of Criminal Procedure cannot be overlooked. The respondent has admitted therein that, he was writing the

account books, collecting the amounts and was also issuing the receipts. It would, therefore, go to show that, necessary entrustment was made, but the learned Magistrate below has missed to take note of the statement made by the respondent in his further statement. However, that aspect will not help the prosecution case. On perusal of the evidence with meticulous care and finicky details, I find that the evidence is not reliable and the learned Judge has rightly discarded the same.

5. Natvarbhai Ramabhai (Exh.35) is also the Member of the Governing Body of the Society. According to him, on 11th November 1983, he paid the amount of Rs.500/- to the respondent, but a receipt of Rs.400/- was issued to him by the respondent. Likewise is the say of another witness, Mohanbhai Mangabhai (Exh.36). According to him, on 1st December 1983, he paid the amount of Rs.1,000/- to the respondent for being credited in the account of the Society, but, the respondent issued a receipt for Rs.900/- and not the whole of the amount of Rs.1,000/-. Thereby, according to him, the respondent misappropriated the amount of Rs.100/-. Ushaben Maheshbhai is examined at Exh.37. She paid the amount of Rs.600/- and the receipt Exh.8 was issued to her. According to her, she paid the amount to Balubhai, the President of the Society and Balubhai issued the receipt. According to Lalitaben Rameshbhai (Exh.38), she paid the amount of Rs.400/- to the respondent, but the receipt was not issued to her. Shankarbhai Revabhai, who was one of the Members of the Governing Body of the Society, in his evidence at Exh.39 states that the respondent misappropriated the amount of Rs.6,194.97ps and the embezzlement came to light after the charge was handed over to the newly appointed Secretary, on 28th December 1986. Moulesh Brijprasad Joshi (Exh.40) was the PSI at the relevant time, who investigated into the matter and filed the chargesheet. No other evidence is led. The evidence which has been led and referred to hereinabove, in brief, mentioning the case thereof, is not appealing. Natvarbhai Ramabhai and Mohanbhai Mangabhai were the Members of the Governing Body of the Society, and they being the Members, were examining the affairs of the Society closely. They would not have, therefore, accepted the receipt of lessor amount, if at all that was given to them. Immediate reaction on their part can be of raising the issue and seeking for an inquiry. But, they did not do so and remained silent for about one year, till the charge was handed over to the successor and the successor brought the so-called embezzlement to light. Belated arraignment, or raising of voice as if blindly following like a sheep, casts serious doubt on their versions.

Their evidence, therefore, cannot be accepted without independent corroboration which is certainly lacking on record. Ushaben Maheshbhai has, no doubt, stated that she paid the amount of Rs.600/- and the receipt was issued to her; but, when she was trapped in her cross-examination, she had to admit that she did not pay the amount to the respondent, but paid the amount to Balubhai, the President, who issued the receipt. If Balubhai issued the receipt of the lessor amount, it can be said that Balubhai is the wrong doer or the party to the wrong, and being the holder of the key position in thee Society, he could suppress the wrong so as to absolve himself from the liability but when everything came to light, something unusual happened and the the respondent came to be wrongly roped in. Lalitaben Rameshbhai also makes the statement alike Ushaben. According to her, she paid the amount of Rs.400/-, but she does not have any idea who was, at the material time, the Secretary of the Society. According to her, she paid the amount, but the receipt was not issued to her. However, when the receipt at Exh.10 was shown to her, she did not support the fact about issuance thereof. She is also not familiar with the handwriting of the respondent. When she has no idea who is the Secretary and to whom she made the payment, but, when the respondent who was sitting in the accused dock in the Court, she made a statement roping in the respondent, it can be said that, after the respondent was pointed out in the open Court, an idea struck to her mind to make the statement so as to rope in the respondent, and accordingly she made the statement and, therefore, her evidence also cannot be considered without any independent corroboration. According to Shankarbhai Revabhai, the misappropriation of the amount of Rs.6,194.97 ps. was found to have been made, but he has also, when asked, admitted that, while handing over the charge, the respondent handed over all the records, books of accounts and even cash amount on hand, to the successor. At that time, nothing was doubted. If that is so, the case of embezzlement cannot be accepted. In short, the evidence on record suffers from vice of unreasonableness. For the aforesaid reasons, the evidence led by the prosecution is not at all appealing and must be viewed with suspicion. It was submitted on behalf of the appellant that, the above referred witnesses were supporting the other one and, therefore, on record, there was corroboration. I cannot accede to the submission. The witnesses referred to hereinabove are, for the reasons stated hereinabove, infirm witnesses, and if one infirm supports the same brand, it is in law, no corroboration.

6. For the aforesaid reasons, the evidence led is not appealing and I do not see any justification to place any reliance thereon. The learned Judge was, therefore, right in placing no reliance on the evidence of the prosecution; and acquitting the respondent. I, therefore, see no reason to upset the findings of the lower Court. The appeal is devoid of merits and requires to be dismissed. It is hereby accordingly dismissed and the order of acquittal is hereby maintained.

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